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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

WILLIENE JACKSON-JONES,
individually and on behalf of all others
situated, KAREN SANTOS, individually
and on behalf of all situated,

Plaintiffs

vs.

EPOCH EVERLASTING PLAY, LLC, a
Delaware limited liability company,
TARGET CORPORATION, a Minnesota
corporation, and AMAZON.COM
SERVICES LLC, a Delaware corporation,

Defendants.

Case No. 2:23-cv-02567-ODW-SK

JOINT RULE 26(F) REPORT

Date: July 10, 2023

Time: 1:30 p.m.

Judge: Hon. Otis D. Wright

1 Pursuant to Federal Rule of Civil Procedure Rule 26(f), C.D. Cal. LR 26-1, and
2 the Court's April 27, 2023 Order Setting Scheduling Conference, Plaintiffs Williene
3 Jackson-Jones and Karen Santos ("Plaintiffs") and Defendants Epoch Everlasting Play,
4 LLC, Target Corporation, and Amazon.com Services, LLC ("Defendants"), by their
5 undersigned counsel, hereby submit this Joint Rule 26(f) Report.

6 **A. Statement of the Case**

7 **Plaintiffs' Statement**

8 The Calico Critters Flocked Toys (the "Products") are a brand of plastic,
9 poseable animal figurines with a flocked exterior, giving them the feel of fur and
10 functioning as a mix between a stuffed animal and a doll. In addition to the flocked
11 figurines, the Products are also sold with accessories, furniture, and dollhouse playsets.

12 Since at least 2017, Epoch intentionally marketed their Products to children
13 under the age of three. Epoch's internal market research, including a survey conducted
14 among parents of girls aged two to three, showed that "brand engagement" (emotional
15 commitment or loyalty) and fanship overwhelmingly occurs at age two to three.
16 Epoch's marketing strategy included, among other things: (1) "touch points" of "dolls,
17 figures and playsets" beginning at age two; (2) developing stories that meet the girls
18 where they are and introducing those stories to children as young as age two; (3)
19 bypassing parents and marketing directly to girls; and (4) using bold designs that catch
20 their eye. Such internal documents show that Epoch intended the Products to be used
21 by children under three years of age, in violation of federal regulations, and
22 notwithstanding the "3+" label on the Products' packaging.

23 This strategy has had fatal results, as the small accessories included with the
24 Products are choking hazards to children. At least two choking deaths and a separate
25 catastrophic injury have been reported to date.

26 Defendants market and sell Calico Critters Flocked Toys directly to consumers.
27 Target in particular controls how and where the Products are sold in its stores, and
28 targets babies and young children as part of a researched marketing effort. For example,

1 to increase sales, Target requires its stores to place the Products at the face and eye
2 level of children under three to entice young children to see and access them, and in
3 turn induce consumers to purchase them for those children. Defendant Amazon.com
4 Services LLC, which also sells Calico Critters through its online marketplace, behaves
5 similarly.

6 Defendants have continued to carry out this highly effective (yet fatal) marketing
7 and sale strategy despite repeated identification of the Products as unsafe by consumer
8 watchdog groups and the above-mentioned reports of fatality and injury. Epoch did not
9 change the Products' design or packaging, and the retailer Defendants did not change
10 the Products placement after a 22-month old suffered from brain trauma in 2013 and a
11 26-month old's tragic death in 2018.

12 Plaintiffs allege causes of action for unjust enrichment and violations
13 California's Unfair Competition Law, Cal. Bus. & Prof. C. §§17200, *et seq.* ("UCL")
14 Specifically, Plaintiffs allege Defendants violated the UCL's 'unfair' and 'fraudulent'
15 prongs. Regarding the 'unlawful' prong, the predicate unlawful act is the Federal
16 Hazardous Substances Act, 15 U.S.C. § 1261, *et seq.* ("FHSA"). Defendant violated
17 the FHSA, and by extension the UCL, by introducing and/or delivering for introduction
18 banned hazardous substances into interstate commerce. *See* 15 U.S.C. § 1263(a)
19 (prohibiting "[t]he introduction or delivery for introduction into interstate commerce
20 of any misbranded hazardous substance or banned hazardous substance."). Under the
21 FHSA, Congress empowered the Consumer Product Safety Commission ("CPSC")
22 with the authority to declare what toys or articles are banned hazardous substances. *See*
23 *generally* 15 U.S.C. § 1262. In turn, the CPSC promulgated the "small parts rule,"
24 which provides that "any toy intended for use by children under 3 years of age which
25 presents a choking, aspiration or ingestion hazard because of small parts as determined
26 by part 1501 of this chapter" is a banned hazardous substance. 16 C.F.R. §
27 1500.18(a)(9). Thus, for a toy to be deemed a banned hazardous substance, it must
28 satisfy two requirements: (1) it must be intended for use by children under three, and

1 (2) it must itself be, or contain, a small part (as determined by whether the toy or part
2 thereof fits without compression into a hollow cylinder one and one quarter inches in
3 diameter (16 C.F.R. §1501.4)). *Id.*

4 Defendants' Position

5 Plaintiffs' Complaint is a purported class action filed by two named plaintiffs on
6 behalf of a putative class of all California consumers who bought a Calico Critters
7 product in the last four years. The Defendants are Epoch Everlasting Play, LLC
8 ("EEP") (the distributor of Calico Critters), and Target Corporation ("Target") and
9 Amazon.com Services, LLC ("Amazon") (retailers of Calico Critters).

10 Plaintiffs assert claims for violation of the California UCL and for unjust
11 enrichment. Plaintiffs base their claims on the allegation that Calico Critters toys are
12 banned hazardous substances under the Consumer Product Safety Act and thus that the
13 sale of these toys is "unlawful" and "unfair" under the UCL. According to Plaintiffs,
14 these toys are banned hazardous substances because they violate the CPSC's "small
15 parts rule." The small parts rule prohibits the sale of toys that are intended for use by
16 children under three and fit into a hollow cylinder with prescribed dimensions.

17 Defendants dispute that Calico Critters toys violate the small parts rule. Under
18 the three-factor test used and repeatedly endorsed by the CPSC for determining which
19 toys are intended for children under three, including (1) the manufacturer's stated
20 intent, (2) the advertising, promotion and marketing of the toy, and (3) whether the toy
21 is commonly recognized as being intended for children under three, Calico Critters toys
22 are not intended for children under three. Defendants' position is more fully detailed
23 in their pending Motion to Dismiss. *See* Dkt. Nos. 15 & 31.

24 Plaintiffs' allegation that defendants intentionally marketed the toys to children
25 under three is categorically false.

26 **B. Amended Pleadings**

27 Plaintiffs do not anticipate amending the complaint. However, if Defendants'
28 Rule 12(b) motion to dismiss is granted with leave to amend, Plaintiffs may amend to

cure any perceived deficiencies.

C. Dispositive Motions

Plaintiffs' Statement

Plaintiffs do not believe any dispositive issues can be determined by motion.

Defendants' Position

Defendants have filed a Motion to Dismiss Plaintiffs' Complaint (Dkt. Nos. 15 & 31). The Motion is fully briefed and pending before the Court. If the Motion to Dismiss does not fully dispose of the case, Defendants anticipate filing a motion for summary judgment at an appropriate time.

D. Discovery

The parties propose the following discovery plan and pretrial deadlines:

Event	Parties' Proposal
Deadline for Plaintiffs to File Motion for Class Certification	December 4, 2023
Deadline for Defendants to File Opposition to Plaintiffs' Motion for Class Certification	January 15, 2024
Deadline for Plaintiffs to File Reply in Support of Motion for Class Certification	February 12, 2024
Fact discovery cutoff	April 8, 2024
Exchange Opening Expert Witness Disclosures	May 15, 2024
Rebuttal Expert Witness Disclosures Due	June 17, 2024
Expert Discovery Cutoff	July 12, 2024
Deadline to file MSJ	August 12, 2024
Deadline to Oppose MSJ	September 9, 2024
Deadline to File Reply ISO MSJ	September 30, 2024
Final Pretrial Conference	Monday, November 11, 2024

Trial	Tuesday, December 3, 2024
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E. Motions

The Parties' agreed-upon deadlines and briefing schedules for motions for class certification and summary judgment are set forth above in Section D.

F. Settlement/ Alternative Dispute Resolution (ADR)

The Parties have not engaged in any efforts to settle or resolve the case to date. Pursuant to Local Rule 16-15.4, the Parties propose participating in a private mediation at an appropriate and mutually-agreeable time.

G. Trial Estimate

The parties propose November 11, 2024 for the Final Pretrial Conference and December 3, 2024 for Trial, as shown in Section D above.

The parties estimate trial will be approximately five court days.

H. Additional Parties

The parties do not anticipate adding additional parties at this time.

I. Trial

This will be a bench trial.

J. Other Issues


There are no other issues affecting the status or management of the case of which the parties are aware at this time.

K. Bifurcation

At this time, the Parties do not propose and do not anticipate seeking the severance, bifurcation, or other ordering of proof in this case.

Dated: July 3, 2023

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